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Association of Australian
Medical Research Institutes

CONSULTATION
**HIGHER EDUCATION RESEARCH
COMMERCIALISATION IP FRAMEWORK**
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Higher Education Research Commercialisation IP Framework

Response to the Department of Education consultation paper

Thank you for the opportunity to comment on the Higher Education Research Commercialisation (HERC) IP Framework paper. The Association of Australian Medical Research Institutes (AAMRI) represents both independent and university-affiliated not-for-profit medical research institutes (MRIs) within Australia. We welcome the Australian Government's focus on facilitating greater translation and commercialisation of research outputs.

We recognise that the initial rollout of the Framework will be targeted at universities, but the Department's long-term view is to investigate more widespread adoption of the Framework. The MRI sector will likely be impacted by the application of this Framework given the close links they have with universities as well as the research commercialisation activities they undertake. Consideration should be given to what lessons can be learnt from the MRI sector when trying to enhance commercialisation, particularly around health and medical research.

Medical research commercialisation

Universities have a broad mission focussing on a full range of disciplines as well as providing education services. MRIs are smaller organisations (~100-800 FTE) with a specific mission to improve health outcomes through research; the sector undertakes around 40 per cent of all government-funded medical research. The combination of a more defined mission and a smaller decision-making structure allows for a more streamlined approach, including towards research commercialisation. The success of this approach has seen some universities replicate the independent MRI model by creating university-based MRIs, providing them with greater autonomy and ability to focus on research and commercialisation.

The HERC IP Framework aims to provide standardised IP licensing and contractual agreements for negotiating and managing university-industry collaboration and partnerships. We recognise the value of providing high-quality and considered template agreements as a starting point for negotiation, particularly for smaller entities that may not have the resources available to develop these in-house. We believe that encouraging the adoption of a consistent approach and process to IP and contract management will likely increase efficiency, reduce risk, and generate better understanding between negotiating parties. Consultation with experienced personnel from industry, research and academia is critical to ensure that the processes and tools developed are informed by practical experience and are balanced and acceptable to users. We note that IP Australia does have a series of model agreements and would like clarification on whether this new set of agreements will replace them.

We strongly believe that the application of the Framework, including processes *and* agreements, should be voluntary and flexible. **We query why the proposal to make the Framework a legislated requirement and whether there is supporting evidence that mandating the Framework will lead to the best outcome. We also query whether other countries that have developed similar frameworks have mandated their application.** A key roadblock for industry, and indeed for MRIs, when attempting to collaborate with universities is the inflexibility of the larger universities with respect to agreement negotiation.

Any strategy to improve collaboration needs to address this issue and encourage universities to acknowledge the requirements of different projects as well as the drivers for national and international partners. Mandating the use of standard agreements runs counter to this.

Mandatory use of standardised agreements to be reconsidered

Research commercialisation can occur via a variety of pathways and with different partners. The considerations and challenges that arise in research commercialisation vary between projects, even within a research field. Thus, it is unlikely that the formats generated within the Framework will comprehensively cover the commercialisation characteristics across different research fields.

Most high-value partnerships are collaborative, long-term and complex and require flexibility on all collaborating parties during the negotiation process to achieve optimal outcomes. Mandatory application of the Framework will likely result in a rigid, rote process to research commercialisation; institutions that inflexibly use the Framework will be viewed as less appealing partners. Such a requirement is likely to have the opposite effect to that intended, with Australian universities becoming less attractive to industry for collaboration.

The paper suggested that flexibility could be introduced in complex agreements to allow for bespoke provisions. While this may be workable to some extent, it does not acknowledge that some industry partners, particularly large, multinationals, may prefer to use their own agreements and may choose not to engage due to this requirement. The paper references an engagement plan with various stakeholders to build acceptance and commitment. **We query whether the mandatory use of standardised agreements has been tested with a variety of industry players across different fields, both nationally and internationally.**

Conclusion

The HERC IP Framework can be an invaluable resource to address IP-related barriers when used as a starting point for negotiations and if it is applied appropriately and voluntarily based on the requirements of each project. Rather than mandating the use of standardised agreements and only allowing variations of specific elements contained within the agreements, the Department should acknowledge the complexity and diversity of projects undertaken by Australian entities and allow for these agreements to be used flexibly as a rule, not an exception.

We propose rather than mandating use, the use of standard templates for less complex agreement types such as confidentiality agreements, material transfer agreements, contract research agreements as well as a pool of standard definitions and model clauses should be encouraged instead. It is our view that the Framework should function more as a guiding resource containing processes, template agreements and educational resources rather than a legislated requirement. Acceptance and adoption of these resources will likely increase once they have been proven to be fit-for-purpose.

Finally, we note that research commercialisation is a multi-disciplinary endeavour, requiring technical, legal, and commercial expertise. Many of the issues outlined in the paper could be addressed with additional investments allowing the employment of skilled personnel to assist with IP management and research commercialisation.